
United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

ST. PAUL, MINNEAPOLIS and
MANITOBA RAILWAY COMPANY,
Corporation and GREAT NORTHERN
RAILWAY COMPANY, a Corporation,

Appellees.

Transcript of Record

Upon Appeal From the United States Court
for the District of Montana.

Filed

JAN 21 1915

F. D. Monckton,
Clerk.

No.....

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Names and Addresses of Attorneys of Record.

BURTON K. WHEELER, Esq., United States Attorney
Butte, Montana.

MESSRS. VEAZEY & VEAZEY, Great Falls, Mon-
tana.

IN THE DISTRICT COURT OF THE UNITED
STATES, DISTRICT OF MONTANA.

UNITED STATES OF AMERICA,

Complainant,

vs.

ST. PAUL, MINNEAPOLIS and
MANITOBA RAILWAY COMPANY,
a Corporation, and GREAT NORTHERN
RAILWAY COMPANY, a Corporation,

Defendants.

Amended Bill of Complaint.

TO THE JUDGE OF THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF MONTANA:

The United States of America, by the Attorney General, and Burton K. Wheeler, United States Attorney for the district of Montana, files this its amended bill of complaint (leave of court having first been obtained) against the St. Paul, Minneapolis and Manitoba Railway Company, a corporation, created under the laws of the State of Minnesota, and the Great Northern Railway Company, a corporation, created under the laws of the State of Minnesota, and thereupon complains and shows to your Honor:

First.

That the defendant, St. Paul, Minneapolis and Manitoba Railway Company is now, and at all the times herein mentioned, was a corporation organized and existing under and by virtue of the laws of the state of Minnesota, and at all the times herein mentioned was, and is, engaged in the business of a common carrier of freight and passengers in the state and district of Montana.

Second.

That the defendant, Great Northern Railway Company, is now, and at all the times herein mentioned, was a corporation organized and existing under and by virtue of the laws of the State of Minnesota, and at all the times herein mentioned was and is engaged in the business of a common carrier of freight and passengers in the state and district of Montana.

Third.

That at all the dates and times herein mentioned, and prior to the 17th day of June, 1907, your orator was the owner in fee simple of those certain lands situated in the state and district of Montana, and within the Flathead land district, of which the land office is at Kalispell (formerly within the Missoula land district), situated in the county of Lincoln, and more particularly described as follows, to wit: Lots one (1), two (2), three (3), four (4), five (5), six (6) and seven (7), and the southeast quarter of the northwest quarter (S E $\frac{1}{4}$ of N W $\frac{1}{4}$) of section thirteen (13), township thirty-one (31) north, range thirty-three (33) west of the Montana principal meridian.

Fourth.

That on or about the 31st day of March, A. D. 1906, said defendant, St. Paul, Minneapolis and Manitoba Railway Company, filed in the United States land office at Kalispell, in said Flathead land district, in the said state and district of Montana, a certain list of lands, describing among others, the lands hereinbefore described; that attached to and a part of said list was an affidavit made and executed by one Thos. R. Benton, the duly authorized agent of the said defendant, St. Paul, Minneapolis and Manitoba Railway Company, and which said affidavit was duly acknowledged before a notary public residing in the county of Ramsey, state of Minnesota, in which said affidavit it was alleged, claimed and asserted, among other things, that said list of lands and said lands were selected by the said defendant, St. Paul, Minneapolis and Manitoba Railway Company, and that said lands were a portion of the public lands claimed by it as inuring to it under the Act of Congress entitled "An act for the relief of settlers upon certain lands in the states of North Dakota and South Dakota," which said Act of Congress was approved August 5, 1892; that said lands at the time of the filing of said list were then and there vacant and unappropriated and were not interdicted nor reserved lands, and were of the character contemplated by said Act. That at the time of the filing of said list and affidavit, said defendant, St. Paul, Minneapolis and Manitoba Railway Company, paid to the Register and Receiver of the said United States land office, at Kalispell aforesaid,

the sum of four dollars as an assessment of the fees payable to the said Register and Receiver, and then and there obtained from said Register and Receiver a certificate and receipt approving said list and certifying, among other things, that said list was found to be accurate by a search of the records, plats and files of said United States land office at Kalispell aforesaid, and also certifying that said lands were not classified and returned as mineral lands or land, and were not claimed as swamp lands, and that there was no homestead, preemption, state or other valid claim to any portion of said lands on file or of record in said United States land office. That in order to obtain patent to said lands hereinbefore described, under said Act of Congress hereinbefore referred to governing the acquisition of the title thereto, it became and was necessary for the said defendant, St. Paul, Minneapolis and Manitoba Railway Company, to file said list and affidavit and secure from said Register and Receiver of said United States land office said certificate, approval and receipt hereinbefore mentioned, and it was also incumbent upon said defendant, St. Paul, Minneapolis and Manitoba Railway Company, to prove to the satisfaction of the Register and Receiver, and to the officers of complainant's General Land Office, whose duty it was to decide whether a patent thereon might lawfully be issued, by satisfactory testimony and evidence that the said lands were of the character contemplated by said Act of Congress hereinbefore referred to. That said above described lands, when so selected, were lands of the complain-

ant belonging to its public domain, were and are mineral lands of great value, to wit, of the value of ten thousand dollars and upwards, and were not subject to selection by said defendant, St. Paul, Minneapolis and Manitoba Railway Company, as inuring to it under the said Act of Congress, but were subject to entry only under the provisions of Chapter 6, Title XXXII of the Revised Statutes of the United States; all of which the said defendant St. Paul, Minneapolis and Manitoba Railway Company, by its officers, attorneys, agents and servants, at the time of the filing of said list and at all times subsequent, well knew.

That thereafter such proceedings were had that on the 24th day of June, A. D. 1907, a patent was issued by the United States to said defendant, St. Paul, Minneapolis and Manitoba Railway Company for the lands hereinabove described, and duly received by it.

Fifth.

That in September, A. D. 1895, said lands hereinbefore described, among others, were classified as mineral by the board of mineral land commissioners under the Act of February 26, 1895 (28 Stat. 683) entitled "An Act to provide for the examination and classification of certain mineral lands in the states of Montana and Idaho." That thereafter the Northern Pacific Railroad Company filed a verified protest with the Register and Receiver of the United States Land Office at Missoula, Montana, against the acceptance of said classification of said board of mineral land commissioners, and thereafter a hearing upon said protest was duly ordered and held and on the 17th

day of June, A. D. 1897, said Register and Receiver of the said land office at Missoula, Montana, adjudged said land to be non-mineral in character; and thereafter an appeal was duly taken from the decision of the said Register and Receiver, to the Commissioner of the General Land Office, and on the 16th day of November, A. D. 1897, the Commissioner of the General Land Office affirmed the decision of the said Register and Receiver of the United States Land Office at Missoula, and thereafter such proceedings were duly had that on April 30th, A. D., 1900, the Secretary of the Interior reversed said decision and held the said land to be mineral in character; that thereafter a motion to review said last mentioned decision was filed by the said Northern Pacific Railroad Company, and on August 1st, A. D. 1900, the said Secretary of the Interior adhered to his former decision of April 30th, A. D. 1900, and held said land to be mineral in character, and thereafter the said classification of said land as mineral by said board of mineral land commissioners hereinbefore mentioned was duly approved by the said Secretary of the Interior on June 15th, A. D. 1901. That through inadvertance and mistake the proper officials of your orator, whose duty it was so to do, did not notify the Register and Receiver of the said United States Land Office at Kalispell, Montana, of the decision of said Secretary of the Interior under date of August 7, A. D. 1900, holding the said land to be mineral in character, and of the approval of said classification by said board of mineral land commissioners, by said Secretary of

the Interior under date of June 15th, A. D. 1901, and did not transmit said decision and approval, or either of them, to said Register and Receiver until the 8th day of May, A. D. 1907.

Sixth.

That the said certificate and receipt hereinbefore referred to insofar as they relate to the lands hereinbefore described, were issued by the said Register and Receiver to said defendant, St. Paul, Minneapolis and Manitoba Railway Company, in reliance by them, and each of them, upon the truth of the said list and affidavit and the statements therein contained filed by said defendant, St. Paul, Minneapolis and Manitoba Railway Company, as aforesaid, and that said patent, insofar as it relates to the lands hereinbefore described, was issued by the officers of the said United States to said defendant, St. Paul, Minneapolis and Manitoba Railway Company, in reliance upon the truth of said list and affidavit hereinbefore described, and the statement therein contained, and said certificate and receipt of the said Register and Receiver, and through the inadvertance and mistake of the officers of your orator in overlooking the decision of the Secretary of the Interior, in letter "N," under date of August 6th, 1900, wherein the said Secretary of the Interior held said land to be mineral in character, and, in overlooking the approval of said classification of said land as mineral by said land commissioners by the Secretary of the Interior under date of June 15th, A. D. 1901.

Seventh.

That said list of lands and affidavit, and each of them, filed by said defendant, St. Paul, Minneapolis and Manitoba Railway Company, as aforesaid, insofar as they and each of them, relate to the lands described herein, were then and there false and fraudulent, as was then and there well known to said defendant, by its officers, agents and attorneys, and that the said list and affidavit and each of them, were then and there filed with intent to deceive the officers of the United States, and to fraudulently obtain and procure the issuance to said defendant of said certificate and receipt by the Register and Receiver of the United States Land Office at Kalispell, Montana, and with intent then and there to deceive the officers of the United States and to fraudulently obtain title to said lands by means of false and fraudulent statements and testimony made and contained in said list and affidavit, in this, to wit: That said lands were not a part and a portion of the public land inuring to said defendant, St. Paul, Minneapolis and Manitoba Railway Company, under the Act of Congress entitled "An act for the relief of settlers upon certain lands in the states of North Dakota and South Dakota," which said Act was approved on August 5, 1892; that said lands were interdicted mineral lands and were not of the character contemplated by said Act; and your orator alleges the fact to be that each and every of the said statements so made by the said defendant, St. Paul, Minneapolis and Manitoba Railway Company, in said list and affidavit as hereinbefore specifically mentioned

and set forth and which are contained in said list and affidavit, to prove that said lands hereinbefore described were of the character contemplated by said Act of Congress, are utterly false and fraudulent and untrue, as the said defendant, St. Paul, Minneapolis and Manitoba Railway Company, then and there well knew; and your orator alleges the fact to be that the said defendant, St. Paul, Minneapolis and Manitoba Railway Company, at the time of filing of said list and affidavit as aforesaid, had full and complete notice and knowledge of the mineral character of said lands.

Eighth.

That said list and affidavit hereinbefore mentioned, and filed as aforesaid, by said defendant, St. Paul, Minneapolis and Manitoba Railway Company, was then and there false, fraudulent and untrue in the several particulars as hereinbefore set forth, and the same were made, filed and offered as proof that said lands were of the character contemplated by said Act of Congress approved August 5, 1892, and entitled "An Act for the relief of settlers upon certain lands in the states of North Dakota and South Dakota," and were then and there filed for the false and fraudulent purpose of imposing upon and deceiving the Register and Receiver of the said United States Land Office, at Kalispell, Montana, and to cause and induce said officers of your orator to believe that the statements contained in said list and affidavit were then and there true, and for the purpose of obtaining and procuring, by means of said fraud and deceit, the issuance of said certificate and receipt by the said Regis-

ter and Receiver as hereinbefore specifically set forth. And that said list and affidavit were then and there filed as aforesaid, insofar as it related to the lands herein described for the false and fraudulent purpose of imposing upon and deceiving the said Register and Receiver of the said United States Land Office at Kalispell, Montana, and to cause and induce the said officers of your orator to believe that the statements and testimony therein contained were true, and that the said lands were of the character contemplated by said Act, and for the purpose of obtaining and procuring, by means of fraud and deceit, the issuance to said defendant of a United States patent for said lands; that the said defendant, St. Paul, Minneapolis and Manitoba Railway Company, by means of said false and fraudulent list and affidavit, insofar as said list and affidavit to the lands hereinbefore described, imposed upon and deceived the said officers and agents of the said United States and caused and induced said officers to believe that the statements and testimony therein contained were true; and your orator alleges that the said officers of the said United States, supposing and believing that the statements and testimony contained in said list and affidavit, insofar as they relate to the lands herein described, were true and relying upon the truth of said statements and testimony so falsely and fraudulently made and given by said defendant, St. Paul, Minneapolis and Manitoba Railway Company, and believing from said statements and testimony contained in said list and affidavit that the said lands were of the character contemplated by said

Act of Congress, were wholly deceived, imposed upon and misled into the issuance of said receipt and certificate to said defendant, St. Paul, Minneapolis and Manitoba Railway Company, and believing that the statements and testimony contained in said list and affidavit were true, and through inadvertance and mistake on the part of the officers of your orator in overlooking letter "H" of August 6, 1910, and the approval of the classification of said lands as mineral by the Secretary of the Interior on June 15, 1901, hereinbefore specifically mentioned, were wholly deceived, imposed upon and misled in permitting the issuance of said United States patent for said lands to said defendant, St. Paul, Minneapolis and Manitoba Railway Company.

Ninth.

That after the issuance of said patent and on or about the 20th day of February, A. D. 1910, this complainant demanded of said defendant, St. Paul, Minneapolis and Manitoba Railway Company, that it reconvey to the United States the lands hereinbefore described; that the said defendant, St. Paul, Minneapolis and Manitoba Railway Company, then and there refused so to do, and still so refuses at the time of the commencement of this action.

Tenth.

That the defendant, Great Northern Railway Company, claims to have some interest in and to the lands hereinbefore described, but that said complainant is not fully and definitely informed as to the precise nature of said claim; and your orator alleges the fact

to be that if the said defendant, Great Northern Railway Company, has any interest in and to the said lands, the said interest was acquired by the said defendant, Great Northern Railway Company, with notice and knowledge of all the facts hereinbefore set forth at and prior to its acquiring any claim or interest in and to said lands, and that the said defendant, Great Northern Railway Company, never paid any consideration for the interest in and to said lands or any part thereof.

Eleventh.

That the existence of said patent, so fraudulently obtained and procured by the said defendant, St. Paul, Minneapolis and Manitoba Railway Company, as aforesaid, on its face entitles the said defendant, St. Paul, Minneapolis and Manitoba Railway Company to exercise the right of absolute ownership of and over said lands and assert a legal title to the same to which the said defendant, St. Paul, Minneapolis and Manitoba Railway Company, is not entitled. That if said patent remains uncanceled and in force, the same can be used in fraud of your orator and all persons relying upon the same as a valid and substantial conveyance of the legal title to said lands and premises, all of which acts and doings are contrary to equity and good conscience, and done to the manifest injury of your orator.

For as much as your orator can have no adequate relief, except in this court, and to the end, therefore, that the defendants, St. Paul, Minneapolis and Manitoba Railway Company, and Great Northern Railway Company, may, if they can show why your orator

should not have the relief hereby prayed, and make a full disclosure and discovery of the matters aforesaid and according to the best and utmost of their knowledge, remembrance, information and belief, true, direct and perfect answer make to the matters hereinbefore stated and charged, but not under oath, an answer under oath being hereby expressly waived.

And your orator prays that a decree be rendered by this court, declaring null and void the said patent issued to said defendant, St. Paul, Minneapolis and Manitoba Railway Company, for said lands and premises, and requiring, directing and compelling said defendant, St. Paul, Minneapolis and Manitoba Railway Company, to surrender, deliver up, and return the said patent to your orator, and that the said defendants, St. Paul, Minneapolis and Manitoba Railway Company, and Great Northern Railway Company, and the officers, agents and employes of each and both of said defendants, be forever and perpetually restrained and enjoined from setting up, asserting, or claiming any rights, privileges, benefits or advantages under said patent, and your orator prays for all such other orders, decree and judgment in the premises as is just and equitable, and as the circumstances and nature of the case may require.

May it please your Honor to grant unto your orator a writ of subpoena of the United States of America, issued out of and under the seal of this court, directed to the said defendants, St. Paul, Minneapolis and Manitoba Railway Company and Great Northern Railway Company, commanding them on a day certain to

appear and answer unto this bill of complaint, and to abide by and perform such order and decree in the premises as the court shall deem proper and required by the principles of equity and good conscience.

J. C. McREYNOLDS,

Attorney General of the United States.

B. K. WHEELER,

United States Attorney, District of Montana.

(Duly verified).

(Endorsed: Filed Jan. 19, 1914,

GEO. W. SPROULE, Clerk).

Thereafter, on February 7, 1914, a motion to dismiss was duly filed herein, being in the words and figures following, to-wit:

(TITLE OF COURT AND CAUSE.)

Motion to Dismiss.

COME NOW the defendants in the above entitled cause, and each of them, and (pursuant to Rule 29 of the Rules of Practice for the Courts of Equity of the United States, for the purpose of asserting defenses in point of law arising on the face of the amended Bill of Complaint herein, by reason of insufficiency of facts to constitute a valid cause of action in equity, which might heretofore have been made by demurrer or plea) jointly and severally, move the Court to dismiss this action, and that the complainant take nothing by this action as against the said defendants, or any of them, that the Bill of Complaint be dismissed with prejudice as to said defendants, and as to each of them, and that said defendants go hence without day.

THIS MOTION is based upon the records and files in this cause.

THIS MOTION is made upon the grounds following:

1. Insufficiency of facts in said amended Bill of Complaint to constitute a valid cause of action in equity.

2. It appears from said amended Bill of Complaint that the lands described in said amended Bill of Complaint, the patent to which the complainant seeks to annul, were and are lands that were patented in lieu of other lands covered by a grant, which were relinquished by the grantee in consequence of the failure of the Government and its officers to withdraw the same from sale and entry; and, by said amended Bill of Complaint, it appears that said suit is brought, and recovery is sought, by the complainant for lands that were patented in lieu of other lands covered by a grant, which were relinquished by the grantee in consequence of the failure of the Government and its officers to withdraw the same from sale and entry; and, by reason of the premises, the said suit, as appears from said amended Bill of Complaint, is brought in violation of the provisions of Chapter Thirty-nine (39) of the Acts of the Fifty-fourth Congress of the United States, approved March 2nd, 1896, entitled "An Act to Provide for the Extension of the Time Within Which Suits May Be Brought to Vacate and Annual Land Patents, and for Other Purposes" (29 Statutes at Large, beginning on page 42), and the same is brought without authority of law, and the complainant's alleged

cause of action is barred by the provisions of said statute. That by reason of the premises the said amended Bill of Complaint does not state facts sufficient to constitute a valid cause of action in equity.

VEAZEY & VEAZEY,

Attorneys for Defendants.

(Endorsed: Filed February 7, 1914.

GEO. W. SPROULE, Clerk.)

Thereafter, on March 31, 1914, the District Court aforesaid rendered its decision herein in the words and figures following, to-wit:

(TITLE OF COURT AND CAUSE.)

Decision.

The act March 3, 1891, Sec. 8, provides suits to vacate land patent thereafter issued, must be brought within five years. No matter what error or mistake the land department made, no matter how gross the fraud and misrepresentations of the patentee, after five years this "benign" statute made the voidable patent valid, provided the lands were public lands open to conveyance by the land department.

U. S. vs. Ry. Co., 165 U. S. 476.

U. S. vs. Chandler, 209 U. S. 450.

Act 1896, March 2, extended the aforesaid provisions to railway grant patents. The act last aforesaid accordingly applies to patents to railroads for grant lands secured by fraud and misrepresentation as well as to those erroneously issued, if by the latter term is intended mistakes of the land department alone. Its general meaning, however, and no reason appears why that should not be given it, embraces patents issued

through the patentee's fraud. The act ^{last} aforesaid further provides that "no suit shall be brought or maintained" to annul patents for lands issued to the beneficiaries of public grants in lieu of granted lands to them lost because of the government's failure to withdraw the latter from entry and sale.

The patent in suit is of the character last aforesaid. The language is clear and plain. "No suit shall be brought or maintained." Again no reason appears why the ordinary or general meaning thereof should not be given, viz, if the lands were public lands open to patent by the land department, once patented inquiry ~~is~~ is closed, suit to annul for any reason prohibited. Such must be the intent of Congress and doubtless for good reason. Said act first provides that in respect to land grant patents in general, whatever the fraud that induced them, after five years no suits should be maintained to annul them; and it second provides that in respect to land grant patents in particular—the special variety—at no time should suits be maintained to annul them, and likewise whatever the fraud that induced them. No exceptions expressed in statutes of limitation and for stronger reason in statutes of confirmation, (for that is the nature of the Act 1896), none will be implied and read in by construction,—not even in cases of fraud. Primarily for defendants' benefit, the legislature is presumed he shall have all thereof save where it inserted some exception.

The motion to dismiss is granted.

March 31, 1914.

GEORGE M. BOURQUIN,

District Judge.

(Endorsed, filed March 31, 1914,

GEO. W. SPROULE, Clerk,

By HARRY H. WALKER, Deputy.)

Thereafter, on March 31, 1914, the court made and entered an order herein dismissing said cause, in words and figures following to-wit:

(TITLE OF COURT AND CAUSE.)

Minute entry of March 31, 1914.

No. 1010. It is ordered that the motion to dismiss in this cause be granted.

Thereafter, on May 28, 1914, the Court made and entered herein its decree in the words and figures following to-wit:

(TITLE OF COURT AND CAUSE.)

Decree.

THIS CAUSE having been heretofore submitted to the Court for decision upon the amended Bill of Complaint herein, and upon the joint and several motion of the defendants herein, to dismiss this cause for want of equity, and for that it appeared upon the face of said amended Bill of Complaint that this action is an action by or on behalf of, or in the interest of, or to the use of the United States, and as such is forbidden by the provisions of the Act of the Fifty-fourth Congress of the United States, approved March 2, 1896, entitled "An Act to Provide for the Extension of the Time Within Which Suits May Be Brought to

Vacate and Annul Land Patents, and for Other Purposes," (29 Statutes at Large, page 42), and for that it appeared from the said amended Bill of Complaint that the lands described in said amended Bill of Complaint, the patent to which the plaintiff seeks to annul, were and are lands, and that said suit was brought, and that recovery was sought by the Complainant, for lands, that were patented in lieu of other lands covered by a grant, which were relinquished by the grantee in consequence of the failure of the Government and its officers to withdraw the same from sale and entry.

Upon the hearing said cause was argued by counsel for the respective parties hereto, and thereafter said motion to dismiss was by the Court sustained, and a decree ordered entered accordingly.

IN CONSIDERATION WHEREOF, and all and singular the matters aforesaid being considered, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the complainant take nothing by this action, and that the Amended Bill of Complaint herein be, and the same hereby is, dismissed with prejudice, and that the defendants herein, Great Northern Railway Company and St. Paul, Minneapolis and Manitoba Railway Company, go hence without day.

This decree is final and on the merits.

Done in open Court this 28th day of May, A. D. 1914, and ordered entered as above.

GEORGE M. BOURQUIN,

District Judge.

Endorsed, filed and entered May 28, 1914,
GEO. W. SPROULE, Clerk.

Thereafter, on the 25th day of November, 1914,
filed its appeal herein together with the allowance
thereof, which is in the words and figures following:

(TITLE OF COURT AND CAUSE.)

IN EQUITY NO. 1010.

Appeal and Allowance.

The above-named complainant, the United States of America, conceiving itself aggrieved by the decree entered herein on the 28th day of May, A. D. 1914, in the above-entitled proceeding, does hereby appeal from said decree to the Circuit Court of Appeals for the United States for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and it prays that its appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the Circuit Court of Appeals of the United States, for the Ninth Circuit, sitting at San Francisco, California.

B. K. WHEELER,

Solicitor for Complainant and Appellant.

The foregoing petition is hereby granted and an appeal is hereby allowed.

Dated this 25th day of November, A. D. 1914.

GEORGE M. BOURQUIN,

Judge of said District Court.

(Endorsed, filed November 25, 1914,

GEO. W. SPROULE, Clerk,

By HARRY H. WALKER, Deputy.)

That on the 25th day of November, 1914, appellant filed herein with its appeal and allowance, its assignment of errors, which are in the words and figures following:

(TITLE OF COURT AND CAUSE.)

IN EQUITY NO. 1010.

Assignment of Errors.

Now on this 25th day of November, A. D. 1914, came complainant, United States of America, by its solicitor, Burton K. Wheeler, United States Attorney for the District of Montana, and says that the decree made and entered in the above entitled cause on the 28th day of May, A. D. 1914, is erroneous and unjust to said complainant, in the following particulars, to-wit:

First: That the court erred in finding that the allegations of the amended bill of complaint herein were insufficient to constitute a cause of action in equity.

Second: That the court erred in finding that, after five years, no matter what error or mistake the land department of the United States of America made, no matter how gross the fraud and misrepresentations of the patentee, St. Paul, Minneapolis and Manitoba Railway Company, were, the Act of Congress of the United States, approved March 3rd, 1891. Section 8, made the voidable patent mentioned in the bill of complaint herein valid, provided, the lands were public lands of the United States of America open to conveyance by the land department of the United States of America.

Third: That the court erred in finding that the Act

of Congress of the United States, approved March 2nd, 1896, extended the provisions of the Act of Congress of the United States, approved March 3rd, 1891, to patents to railroads for grant lands secured by fraud and misrepresentations as well as to those patents erroneously issued.

Fourth: That the court erred in finding that the Acts of Congress of the United States, approved, both respectively, March 3rd, 1891, and March 2nd, 1896, applied to and embraced patents to lands issued through the 'patentees' fraud.

Fifth: The court erred in finding that the land patent, sought to be annulled and cancelled by this action, was one issued to the beneficiaries of public grants of land in lieu of granted lands lost to such beneficiaries because of the failure of the United States of America to withdraw such granted lands from entry.

Sixth: The court erred in holding that, if the lands described in the bill of complaint herein, were public lands of the United States of America, open to patent by the Land Department, that under the provisions of the Acts of Congress of the United States, approved March 3rd, 1891, and March 2nd, 1896, each respectively, once patent inquiry is closed, suit to annul or cancel the patent is prohibited.

Seventh: That the court erred in finding that no matter what fraud induced the issuance of a patent to land in general by the United States of America, no suit could be maintained to cancel such patent after five years from the date of issuance of such patent.

Eighth: That the court erred in finding that no matter what fraud induced the issuance of patent for grant land by the United States of America, no suit could be maintained at any time to cancel or annul such patent.

Ninth: That the court erred in holding and finding that the cause of action alleged in complainant's bill of complaint herein is not maintainable and is forbidden by the provisions of the Act of the Fifty-fourth Congress of the United States, approved March 2nd, 1896, entitled, "An Act to provide for the Extension of the Time Within Which Suits May Be Brought to Vacate and Annul Land Patents, and for Other Purposes," (29 Statutes at Large, page 42).

Tenth: That the court erred in holding and finding that the lands described in the amended bill of complaint herein, the patent to which plaintiff sought to cancel and annul, were and are lands, and that said suit was brought and that recovery was sought by complainant, for lands, that were patented in lieu of other lands covered by a grant, which were relinquished by the grantee in consequence of the failure of the United States of America and its officers to withdraw said the same from sale and entry.

Eleventh: The court erred in refusing to find and hold that the facts alleged in complainant's bill of complaint were sufficient to constitute a cause of action in equity and that such cause of action was not barred or forbidden by the provisions of the Act of Congress of the United States, approved March 2nd, 1896.

Twelfth: That the court erred in holding that the

bill of complaint herein states no cause for equitable relief.

Thirteenth: That the court erred in sustaining defendants' motion to dismiss complainant's bill of complaint herein with prejudice.

Fourteenth: That the court erred in holding that under the pleadings herein complainant was entitled to no relief in equity as prayed for in the bill of complaint.

Fifteenth: That the court erred in entering a decree herein dismissing complainant's bill of complaint.

WHEREFORE complainant prays that said decree be reversed and said district court be directed to enter a decree herein as is prayed for in its bill of complaint.

Dated November 25, 1914.

BURTON K. WHEELER,
United States Attorney,
Solicitor for Complainant.

(Endorsed; filed Nov. 25, 1914,

GEO. W. SPROULE, Clerk,

By HARRY H. WALKER, Deputy).

Thereafter, on November 25, 1914, a citation on appeal herein was duly issued out of the above entitled court, which is in the words and figures following:

(TITLE OF COURT AND CAUSE.)

Citation on Appeal.

UNITED STATES OF AMERICA—ss.

To St. Paul, Minneapolis and Manitoba Railway Company, a corporation, and Great Northern Railway Company, a corporation, defendants and respondents, and Messrs. Veazey and Veazey, their at-

torneys and solicitors:

GREETING:

You, and each of you, are hereby notified that in the above entitled cause, a proceeding in equity, in the District Court of the United States, in and for the District of Montana wherein the United States of America is complainant and St. Paul, Minneapolis and Manitoba Railway Company and Great Northern Railway Company, corporations, are defendants, an appeal has been allowed the said Complainant, United States of America, therein to the United States Circuit Court of Appeals for the Ninth Circuit, and you, and each of you, are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals, for the Ninth Circuit, at the City of San Francisco, in the state of California, within thirty days from the date hereof, to show cause, if any there be, why the decree mentioned in said appeal, and from which said appeal is taken, should not be corrected and reversed and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable GEORGE M. BOURQUIN, Judge of the District Court of the United States, in and for the District of Montana, this the 25th day of November, A. D. 1914.

GEORGE M. BOURQUIN,

Judge of the District Court of the United States, in and for the District of Montana.

Service of the foregoing citation and receipt of a copy thereof this 25th day of November, A. D. 1914,

is hereby admitted and acknowledged.

VEAZEY & VEAZEY,

Solicitors for Defendants and Respondents.

(Endorsed, filed Dec. 1, 1914,

GEO. W. SPROULE, Clerk.)

Thereafter, on December 2, 1914, the above entitled court duly made its order herein, which is in words and figures following:

(TITLE OF COURT AND CAUSE.)

Order Extending Time to Prepare, Etc., Record on Appeal.

Upon good cause shown, it is hereby ordered that complainant and appellant in the above entitled cause, may have thirty days in addition to the time allowed by law and the rules of the court within which to have prepared and certified up to the United States Circuit Court of Appeals for the Ninth Circuit the record on appeal herein.

Dated December 2nd, 1914.

GEO. M. BOURQUIN,

Judge.

Thereafter, on December 2, 1914, appellant duly served and filed herein its praecipe for a transcript of the record on appeal herein, which is in words and figures following, towit:

(TITLE OF COURT AND CAUSE.)

Praecipe for Transcript of Record.

To St. Paul, Minneapolis and Manitoba Railway Company, and Great Northern Railway Company, defendants and respondents, and Messrs. Veazey & Veazey, their solicitors:

The undersigned, solicitor for complainant and appellant herein, hereby files and serves upon you its praecipe, in conformity with the rules of court, indicating the portions of the record in the above entitled cause, to be incorporated into the transcript on appeal herein, and which said portions of said record you are hereby notified the said complainant and appellant will incorporate and include in the record on appeal herein:

Said portions are as follows:

1. The amended bill of complaint,
2. Defendants' motion to dismiss the amended bill of complaint;
3. The above entitled court's decision dated March 31, 1914, granting defendants' motion to dismiss the amended bill of complaint herein;
4. Minute entry order dated March 31, 1914, ordering the above entitled cause to be dismissed;
5. Decree made and entered in the above entitled cause on the 28th day of May, 1914, dismissing said cause and said amended bill of complaint;
6. Copy of appeal and allowance thereof by the court;
7. Assignment of errors;
8. Citation on appeal and admission of service by defendants;
9. Order extending time for completing and transmitting the record on appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit;
10. Copy of this praecipe.

The entire judgment roll as the same appears of record in the office of the clerk of the above entitled

court is not included herein, as only those portions of it which are specified in paragraphs numbered 1, 2, 4 and 5 of this praecipe are considered necessary for the purpose of the appeal herein.

BURTON K. WHEELER,

United States Attorney, District of Montana.

Solicitor for Complainant and Appellant.

Service of the foregoing praecipe and receipt of a copy thereof this 2nd day of December, 1914, is hereby admitted and acknowledged.

VEAZEY & VEAZEY,

Solicitors for Defendants and Respondents.

(Endorsed, filed Dec. 10, 1914,

GEO. W. SPROULE, Clerk,

By HARRY H. WALKER, Deputy.)

Clerk's Certificate to Transcript of Record.

United States of America, }
District of Montana. } ss.

I, George W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 27.7. pages, numbered from 1 to 29., inclusive, is a true and correct transcript of the amended bill of complaint, motion to dismiss, decision of the court, minute order dismissing bill of complaint, decree, appeal and allowance, assignment of errors, citation on appeal and acknowledgment of service thereof, order of court extending time for completing and transmitting record on appeal herein, and copy of praecipe for transcript of

record and acknowledgement of service thereof, and the whole thereof as appears from the original records and files of said court in my possession as such clerk; and I do further certify that I transmit herewith the original citation issued in said case.

I do further certify that the costs of the transcript of record amount to the sum of \$⁶~~6~~²⁵....., and have made a charge against appellant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court at Helena, Montana, this ^{15th}~~15~~ day of January, A. D. 1915.

..... *Geo W Sproule*

Clerk.

(SEAL)

